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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RANDAL J. JOLITZ

Appeal 2009-000180
Application 10/757,145
Technology Center 3600

Oral Hearing Held: September 22, 2009

Before JENNIFER D. BAHR, MICHAEL W. O'NEILL and FRED A. SILVERBERG, *Administrative Patent Judges*.

ON BEHALF OF THE APPELLANT:

WILLIAM B. KIRCHER, ESQ.
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35 The above-entitled matter came on for hearing on Tuesday, September 22,
36 2009, commencing at 9:33 a.m., at the U.S. Patent and Trademark Office,
37 600 Dulany Street, Alexandria, Virginia, before Jennifer O'Connor, Notary
38 Public.

PROCEEDINGS

THE CLERK: Good morning. Calendar No. 57, Mr. Kircher.

JUDGE BAHR: Good morning, Mr. Kircher.

MR. KIRCHER: Good morning. Are we ready?

JUDGE BAHR: Whenever you're ready.

MR. KIRCHER: I'm Bill Kircher with the Husch Blackwell Sanders from Kansas City. I have the pleasure of representing TAMKO and in this particular appeal. I'm pleased to be here.

First, a little background might be helpful with respect to this client in particular invention. TAMKO is a family owned company in Joplin,ouri. The company has been in the shingle business since the early s. It believe you me knows shingles. It's probably -- I know that it's in top five shingle companies in the world in terms of its sales and the per of products that it has in the roofing and shingle business.

There's a little town called Lamar, Missouri that's a suburb of Joplin. Lamar, Missouri is probably not familiar to you all, except that it was the place of Harry Truman, and Mr. Truman lived on a farm in Lamar until he moved to the Kansas City-Independence area for some time. There's also a furniture company in Lamar. The furniture company uses a lot of wood. There is a mountainous pile of sawdust outside of this furniture company.

Every day, an executive of TAMKO, who lived in the Lamar area and drive past this big pile of wood. He was also very familiar with building products, and he knew that he could get a large amount of plastic recycled milk cartons. He came upon the idea of well let's make a composite shingle. Let's use that cellulosic material in these huge big

1 mounds that we see outside the furniture company, and let's use recycled
2 milk cartons and get the plastic from that, and we'll have a very friendly
3 green-type product. So he did.

4 The shingles were called composite shingles and the company started
5 a subsidiary called Epoch, E-P-O-C-H. The Epoch shingle, the composite
6 shingle, is made by adding this cellulosic product into a kinetic mixer and
7 adding, you add to the kinetic mixture this recycled plastic that he gets, that
8 they were able to get from the milk cartons. Voila, you had agglomerated, is
9 the word that they use, agglomerated cellulosic material which is then
10 extruded, and the extrudite was then taken to a mold and shingles were
11 molded.

12 These shingles, when they're put on a, if I may, may I come a little
13 closer? These shingles, when they're put on a roof, on the eave of a roof, for
14 want of a better word, there's a starter strip. These starter strips are nailed
15 along heretofore, were nailed along the roof eave. The composite shingle
16 was placed on the starter strip in their nailing zones.

17 These nails would be placed on the shingle. It would be forced down,
18 and the shingle would bend and sometimes break. There was a line of stress
19 due to the fact that the starter block was so shaped the way that it was, and
20 the nailing zone was so located in the shingles. You want the front part of
21 the shingles to show obviously, and the back part to be covered by the
22 succeeding courses.

23 So when the nails were put in at the proper location, as in most
24 shingles, this bend line caused, and it was a severe problem, particularly
25 with respect to composite products, although also with other shingles. You

1 don't have this problem with asphalt shingles. They're very pliable.
2 TAMKO also makes a world of asphalt shingles.

3 But it's with the more structurally sound shingles, not sound, but more
4 structurally rigid shingles that this is caused to happen. So they recognized
5 this problem, and they came up with an elegantly simple solution to that
6 problem. The solution was a starter block, and it's made of unitary
7 construction. It is so sized that when your shingle is placed on this starter
8 block and then nailed to the roof, this bend line is removed. The shingles
9 don't fail, they don't break, they don't prematurely wear out. The shingle
10 lays on top of the starter block and it's flat.

11 Now what's flat mean? Well, we describe flat in our specification,
12 and we describe flat was being generally planar, and it runs from the back
13 edge of the shingle to the forward edge of the shingle, and it's flat. It's not
14 stepped.

15 JUDGE BAHR: Now do you define the bottom surface of the shingle
16 as being flat or just the way it lies on the --

17 MR. KIRCHER: Yes, yes. We define it as being flat and planar.

18 JUDGE BAHR: In the claim?

19 MR. KIRCHER: In the specifications. We define flat --

20 JUDGE BAHR: Would you point to me where that definition is in the
21 specification?

22 MR. KIRCHER: It is, let's see, about line in paragraph 30. May I
23 read it?

24 JUDGE BAHR: Please.

25 MR. KIRCHER: We say "As can be seen in Figure 5, the size and the
26 shape of the starter block, and in particular the taper height of the starter

1 block causes the back edge, that's the back edge of the shingle (260) of the
2 shingle (210), to be in contact with the roof (150), when the shingle (210) is
3 installed overlying the starter block. Notably, the back edge (260) of shingle
4 (210) is in contact with the roof, even though the shingle is lying flat along
5 the length of the top surface of the starter block, and even the shingle is not
6 bent, flexed, curved, bowed as it extends back beyond the starter block (10).

7 "In other words, the shape and dimension of the starter block allows
8 the shingle, and likewise the succeeding shingles (220, etcetera, etcetera), to
9 be installed so that it remains planar between its back edge (260), which is in
10 contact with roof (150) and the front edge (250)." So that's planar. The
11 shingle is planar. It is not stepped.

12 JUDGE SILVERBERG: Excuse me, sir. You don't have -- are you
13 telling us that the shingle that goes on the block doesn't have any bend in it?

14 MR. KIRCHER: Well, we say a very, very slight bend. We say it's
15 substantially not there. There's a very, very, almost insignificant bend.

16 JUDGE SILVERBERG: Because whatever the wedge that you put
17 up, it's got -- it flexes a little bit.

18 MR. KIRCHER: It does. The shingle, and it has some memory to it
19 when it's made. So it's made a little bit bold, as you can see. So when it's
20 nailed down and it kind of flattens out, it's flat if there's no bend in it. It
21 brings itself down. It's nailed and it's flat atop the starter block, substantially
22 flat.

23 Now you're right. It does have a minuscule bend there, but not
24 enough to damage the shingle.

1 JUDGE BAHR: So how do I know if I have a starter block that meets
2 that limitation, because doesn't there have to be a relationship between the
3 length and the angle of taper of the starter block and the shingle itself?

4 MR. KIRCHER: Yes, it does. That relationship is described in the
5 claim. The claim is that it's going to be such that it's going to be sized such
6 and shaped such, and it has this taper. The sides taper, which is also
7 mentioned in the claim. So that when the shingle is placed atop the starter
8 block, it lies flat. It's planar. From the back edge, where this back edge
9 contacts the hip roof and the front edge, where it contacts the front edge of
10 the shingle.

11 JUDGE BAHR: For example, Claim 1 is just directed to the starter
12 block itself. I've got a starter block sitting on a shelf.

13 MR. KIRCHER: Yes.

14 JUDGE BAHR: How do I know whether that starter block is shaped
15 in dimensions such that a shingle of I'm not sure what size, placed flat on the
16 top surface of the starter block, will extend back to the roof without
17 substantially bending?

18 MR. KIRCHER: Well, that shingle would be the one that would
19 come within the scope of our claim.

20 JUDGE BAHR: The shingle isn't part of the claim.

21 MR. KIRCHER: Well, the shingle defines the shape of the starter
22 block. This starter block is going to be so sized that when used with that
23 shingle, it's going to permit that shingle to lie flat on the hip roof, from the
24 back edge to the forward edge. That's the size and that's the shape, and as
25 we say in that paragraph, we describe what that size and shape is.

1 The size and shape of the starter block is so defined by the function.
2 The Fed Circuit has said time and time again that you can define structure by
3 the function that it has, and I have several cases I brought with me. I don't
4 need to cite them to you. You know those. The function that we have
5 recited in that claim causes that structure of that starter block to be of a
6 certain size.

7 JUDGE BAHR: Only if I knew what size the shingle is, and what
8 rigidity the shingle has?

9 MR. KIRCHER: You don't. With all due respect, the shingle and the
10 starter block, you know, is not going to work with a stepped on your surface.
11 That's going to be something else. If it has a stepped under surface, it
12 doesn't work with this. It won't lie flat.

13 JUDGE BAHR: I'm sorry, if what has a stepped under surface? If the
14 starter block --

15 MR. KIRCHER: If the shingle does.

16 JUDGE BAHR: The shingle does.

17 MR. KIRCHER: Uh-huh. It won't work. But it will with this design
18 starter block. It lays and the shingle goes past the edge and lays flat, and the
19 starter block is used with that shingle.

20 JUDGE BAHR: I understand if you've got a combination claim, as
21 you do in Claim 12. I understand that at least I might be able to make some
22 guess as to how that starter block has to be shaped and sized. But I'm just
23 not sure if I've got a wedge sitting on a shelf, how I would know that that
24 does or does not meet this limitation, because for a certain sized shingle, it
25 seems to me almost any wedge would meet that.

1 MR. KIRCHER: Well, I don't think so, because certain wedges stop
2 too short. Certain wedges will not permit the shingle to lie flat, and that
3 functional aspect of it is why we have described it in that particular fashion.
4 The cases are replete where you can describe, for example, a point. There's
5 a cited Fed Circuit case, where a point of a spike is defined as sufficient to
6 penetrate a membrane, where a threaded structure is described as being
7 sealably threadable.

8 Those things are functional language, and it's language that we can
9 use to define what the shape of that starter block is.

10 JUDGE BAHR: I understand that, so long as the complete function is
11 clear.

12 MR. KIRCHER: How could it --

13 JUDGE BAHR: If you don't know what you're operating with, how
14 can the function be clear?

15 MR. KIRCHER: Well, we think it's clear. We think it defines -- you
16 know, flat is flat. It's not stepped, and we say it's planar. We say it runs
17 from the back edge of the roof to the front edge, and that shingle placed atop
18 this is going to lie flat.

19 JUDGE SILVERBERG: Question for you along those same lines.
20 Looking at, what is it, Kirkhoff?

21 MR. KIRCHER: Kirkhoff.

22 JUDGE SILVERBERG: And look at that wedge?

23 MR. KIRCHER: Right.

24 JUDGE SILVERBERG: Using your interpretation, and reading that
25 in light of Claim 1, am I correct in looking at this thing that it's the shingle
26 that's going to determine whether there's any bending or not, because we

1 have a wedge. There's a wedge in Kirkhoff, and whether the shingle bends
2 or not depends on the structure of the shingle, not the structure of the
3 wedge?

4 MR. KIRCHER: It depends a good deal on the structure of the
5 wedge.

6 JUDGE SILVERBERG: Well obviously there's a wedge here. I
7 mean forget these shingles that are on here, because the shingle's not
8 claimed. You put one of the shingles that you have right in front of you that
9 you've shown us, and you've been gracious to bring in. You put that on top
10 of this wedge, maybe it doesn't bend.

11 MR. KIRCHER: You know, may I approach the bench?

12 JUDGE SILVERBERG: Sure.

13 MR. KIRCHER: Now I think I know what you're referring to. I'm
14 going to draw a profile of what we think of as Kirkhoff. If you put our
15 wedge, our starter block, underneath that.

16 JUDGE SILVERBERG: Why would you -- may I ask, why would
17 you put your starter block under there?

18 MR. KIRCHER: Well, I thought that's what you were asking.

19 JUDGE SILVERBERG: No. What I'm saying is, and I mean maybe I
20 should make it a little bit clearer, is looking at the wedge in Kirkhoff, which
21 we're looking at 72, why is that not of the shape to have a shingle on it, not
22 to substantially bend? It depends on the shingle, the structure of the shingle.
23 If you use the asphalt shingles, they're going to bend. If you use the
24 composite shingles, as you've shown us, there's going to be slight bending.
25 So it's the shingle itself that's doing the bending or not bending, whereas
26 looking at the wedge, we all know that if you have a fat wedge, skinny

1 wedge, it all depends on the thickness of your shingle. So the shingle is
2 playing a role, yet the shingle's not claimed.

3 MR. KIRCHER: Well, the shingle is in the claim to define the shape
4 and size of the starter block, and if I may attempt to answer that question, it's
5 a good question. That is the Kirkhoff starter block is not flat, it's not planar.
6 It has an interlocking edge, and we recite in the patent specification, those
7 are different kinds of shingles. Those with those interlocking starter blocks
8 are not what we're claiming.

9 That has a stepped lower surface. That stepped lower surface is
10 notched, so that the starter block fits clearly within that notch. It's not
11 planar, it's stepped.

12 JUDGE SILVERBERG: That's the shingle.

13 MR. KIRCHER: That's the shingle.

14 JUDGE SILVERBERG: But the shingle is not claimed.

15 MR. KIRCHER: But the shingle is incorporated into the claim to
16 define the starter block.

17 JUDGE SILVERBERG: Okay.

18 MR. KIRCHER: Now continuing on with the rejection, there are
19 other things that are here that are not shown besides that flat language. We
20 also claim a composite starter block, and one that's of unitary construction.
21 The examiner has done a once over lightly with that, and says Kirkhoff
22 shows a starter block of unitary construction, and we respectfully disagree.
23 That starter block has a top plate, a bottom plate and a body member. It's
24 not of unitary construction.

1 JUDGE BAHR: The Examiner says that the starter block of unitary
2 construction is that Element 72, which is everything except the top and
3 bottom plates. Can you respond to that?

4 MR. KIRCHER: Well, but it takes all three pieces to make that starter
5 block, and that's the body. That's one portion of the three of the starter
6 block. That's just -- respectfully, that's just not the case. I mean it's not a
7 unitary construction. It's a three piece construction.

8 JUDGE BAHR: Well, that body piece 72 is a unitary construction,
9 isn't it?

10 MR. KIRCHER: Yes. It's one of. I mean it's like a pad of post-its.

11 JUDGE BAHR: Well, we haven't put the top and bottom plate on it
12 yet. It's just Body 72. Would that satisfy the claim?

13 MR. KIRCHER: No, because it does not permit the shingle to lie flat
14 on that surface. It takes that stepped surface of Kirkhoff to mate with the
15 interlocking nature of that starter strip. That's an interlocking shingle and
16 starter.

17 JUDGE BAHR: You couldn't line a shingle on that rectangular
18 surface 74? Well, I'm sorry. Not 74, but what lies under the plate 74.

19 MR. KIRCHER: On 72?

20 JUDGE BAHR: In fact, yes. On the top surface of 72. It's got -- it
21 is -- it has an upper surface 90 and it has a lower top surface on the top of
22 72, which doesn't have a number. It's the surface on which that top --

23 MR. KIRCHER: There's a plate 76, the bottom plate is attached to the
24 body member 72, and the --

25 JUDGE BAHR: So under my scenario, there is no top and bottom
26 plate, just body 72.

1 MR. KIRCHER: Yeah, you could do that, and you could put that in
2 there. But it wouldn't be -- I mean that would be a reconstruction of
3 Kirkhoff. It would be a redo of it. It would eliminate the plates.

4 JUDGE BAHR: No, it wouldn't eliminate the plates. You just haven't
5 put them on yet.

6 MR. KIRCHER: Well, then it wouldn't fit. I mean the plates are
7 necessary to fit for the interlocking construction that's --

8 JUDGE BAHR: Well, I'm not talking about interlocking construction.
9 I'm just saying we've got this body 72. What limitation of Claim 1 does it
10 not meet?

11 MR. KIRCHER: It will not permit the overlying shingle to lie flat
12 thereon. It's not a planar, lower surface of that shingle. It's a stepped
13 shingle.

14 JUDGE BAHR: The shingle -- this claim is not directed to the
15 shingle. It's directed to the starter block.

16 MR. KIRCHER: But the starter block shape and size, as we say in
17 that paragraph 30, is defined by its function with respect to the shingle. We
18 can define that by its function.

19 JUDGE BAHR: Okay. I'm just asking you to explain to me why a
20 planar shingle, with a flat, planar bottom surface, could not be placed on the
21 top surface of body 72?

22 MR. KIRCHER: You know, perhaps it could, but it would certainly
23 take a remake of Kirkhoff. You'd have to redo it. You'd have to eliminate
24 its intended function. Its intended function is to interlock with that --

25 JUDGE BAHR: So you want us to give weight to intended use then?

26 MR. KIRCHER: Pardon me?

1 JUDGE BAHR: You want us to give weight to the intended use of --

2 MR. KIRCHER: Of Kirkhoff, it's an interlocking shingle, and ours is
3 not interlocking. If you would -- if I may. If you put ours in, ours has a
4 front and a rear surface. You put Kirkhoff on that, and you've got all this
5 gap in front.

6 JUDGE BAHR: I don't think the Examiner is relying on the shingle
7 of Kirkhoff. The examiner's relying on body 72 of Kirkhoff.

8 MR. KIRCHER: Yes, but the Examiner completely omits a
9 discussion of the flat undersurface of the shingle, which we have in the
10 claim, because it defines the shape of the starter block.

11 JUDGE BAHR: With all due respect, I don't see in either Claim 1 or
12 Claim 12 a flat planar surface, bottom surface of the shingle.

13 MR. KIRCHER: We say it lies flat. We say that shingle lies flat, and
14 flat is defined, as we have mentioned, in paragraph 30. We define flat as
15 planar. We can be our own lexicographer. We say what flat is. Flat is, as
16 we say in paragraph 30 of our application, the size and shape of the starter
17 block causes the back edge of the shingle (260), back edge (260), shingle
18 (210), to lie flat.

19 Now what is flat? We then say so it can be so and remain planar,
20 between its back edge, which is in contact with the roof and the front edge.
21 We describe that succinctly in our patent application. We describe what flat
22 means. Flat is flat. Flat, according to our definition, is planar. Flat,
23 according to Webster's 9th is planar.

24 JUDGE BAHR: Right, but there's no surface of a shingle even
25 inferentially resided in either Claim 1 or Claim 12.

26 MR. KIRCHER: No surface?

1 JUDGE BAHR: Correct.

2 MR. KIRCHER: We say it's lying flat. If it's going to lie flat, it has
3 to have a surface that's lying flat. The shingle, as Claim 1 says, the shingle
4 lies flat without bending.

5 JUDGE BAHR: Okay. I think we should move on.

6 JUDGE O'NEILL: I'd like this to -- what is, continuing with this, the
7 body member 72, that's how it's identified in Kirkhoff, that was on the shelf,
8 just that. Your claimed block was on the shelf. What is discerning it to?

9 MR. KIRCHER: You mean only 72?

10 JUDGE O'NEILL: Only 72.

11 MR. KIRCHER: Without the plate, so that --

12 JUDGE O'NEILL: No plates, as Judge Bahr said.

13 MR. KIRCHER: Then it isn't sized and shaped to permit a shingle to
14 lie flat, and those are the relative dimensions that we describe in paragraph
15 30 of the patent spec. It won't -- pardon me.

16 JUDGE O'NEILL: You're not -- it's not a composite shingle. It's any
17 shingle.

18 MR. KIRCHER: Well, we claim it as a composite shingle. We claim
19 it as a composite starter block.

20 JUDGE O'NEILL: Well, it's a composite starter block.

21 MR. KIRCHER: Right.

22 JUDGE O'NEILL: I'm trying to understand, if I had those two, your
23 claimed starter block on the shelf next to this wedge, why couldn't this
24 wedge 72 --

25 JUDGE BAHR: Perform the function.

26 JUDGE O'NEILL: Perform the function?

1 MR. KIRCHER: Well, because it is designed as an interlocking
2 wedge, if I may. It is designed to interlock with a similar shaped front edge
3 of the shingle. Unless that has that interlocking shape, the shingle won't lie
4 flat. It won't be planar from rear end to front edge. It's an interlocking
5 shingle. We discuss those in our patent spec, and we say our invention is
6 something other than those interlocking shingles.

7 JUDGE SILVERBERG: Sir, if I may interject. You've got your
8 wedge. You put a shingle on top of it. You're telling us it lies flat?

9 MR. KIRCHER: Yes.

10 JUDGE SILVERBERG: Correct?

11 MR. KIRCHER: Yes sir.

12 JUDGE SILVERBERG: Take the 72 in Kirkhoff. Take the same
13 thing. Take your same shingle. Put it on that wedge. Why wouldn't that lay
14 flat?

15 MR. KIRCHER: It bends. When it's nailed, it will bend. The same
16 way that it would be like this structure. When you put this underneath the
17 front edge and nail the shingle down, that's the problem that we sought to
18 solve. That's the long-felt need that this invention solves. That would cause
19 it to bend. It would cause the shingle to fail along the stress line.

20 The composite, the concept of a composite shingle too, we also have
21 that language in Claim 1, that it is a composite starter block. We have noted,
22 as late as September 9 of this year, the Fed Circuit rendered a decision in
23 *Nistrom v. Peck* that says that a composite board does not infringe a claim
24 limitation of boards made of wood cut from a log.

25 So the Fed Circuit is recognizing that composite is a different
26 material, and has different context with respect to a patent claim. The

1 Kirkhoff teaches a polyurethane structure. The Gleason patent, which was
2 also cited, says it is a -- it doesn't even show a starter block. It shows a
3 shingle with a stepped under surface, and refers to a metal starting block.

4 The Hardy patent teaches a combination of wood, metal and concrete.
5 This, insofar as we know, is the only starter block of unitary construction
6 that is composite. None of these other patents have anything close to that.
7 Say nothing of the ability of that starter block to cause the overlying shingle
8 to be flat.

9 JUDGE BAHR: Does your Brief include an argument that Kirkhoff's
10 block is not a composite block?

11 MR. KIRCHER: Yes.

12 JUDGE BAHR: And that would be? Is that in the Main Brief or the
13 Reply Brief?

14 MR. KIRCHER: I think it's in both, as a matter of fact. I mean the
15 Examiner conveniently ignores that feature. Now our client has been in the
16 shingle business for well over 60 years. As I said, it's one of the top five
17 shingle manufacturers in the world. It knows of no prior art that is similar to
18 this. I was an examiner in the 60's. I know how hard of a job it is to search.
19 I daresay that the searching techniques and capabilities of examiners are
20 probably far, far past what I could do in the 1960's. Yet the Examiner has
21 not disclosed any prior art that would meet the claims of this particular
22 patent.

23 The Fed Circuit says that structure can be defined by a functional
24 limitation. Flat means flat. It's not stepped. Unitary means single piece. It
25 doesn't mean three pieces. Composite doesn't mean plastic, wood or

1 concrete. These claims are allowable. It has a tortured prosecution history
2 of almost six years.

3 This is an elegantly simple invention. There's nothing in the prior art,
4 nothing in the prior art that meets that claim. We could claim it with respect
5 to the function of the shingle, and Judge Silverberg's correct. The shingle is
6 in that claim inferentially only. It's in the claim to define the size and shape
7 of the starter block as we have shown in the specification. May I answer any
8 other questions?

9 JUDGE BAHR: No. Did you want to address the Hardy reference?

10 MR. KIRCHER: The Hardy reference is one of concrete. The Hardy
11 reference has -- it's an interlocking starter block, if it's a starter block at all.
12 It's poured concrete. The starter block's a combination of tar paper and
13 wood, and these concrete blocks interlock with the rear edge of the Hardy
14 starter block, and the Hardy reference is stepped. It is not flat, as shown in
15 that --

16 JUDGE BAHR: --to that reference is also directed to the step nature
17 of the shingle.

18 MR. KIRCHER: Yeah, and to the construction of the starter block.

19 JUDGE BAHR: What about the starter block is a block? The cement
20 wedge, that first layer, is that a composite?

21 MR. KIRCHER: No, it's not a composite material.

22 JUDGE BAHR: Concrete is not a composite?

23 MR. KIRCHER: No, no. Composite is -- we define composite. It's
24 either composite is a combination of plastic, a poly material and a filler
25 material.

26 JUDGE BAHR: Is it unitary construction?

1 MR. KIRCHER: No, it's not unitary. It has -- it's wrapped in tar
2 paper.

3 JUDGE BAHR: But the concrete itself, is it unitary construction?

4 MR. KIRCHER: Well, you know, the concrete is.

5 JUDGE BAHR: Okay. Thank you.

6 MR. KIRCHER: I thank you very much, and I've enjoyed this
7 morning.

8 JUDGE BAHR: Do you have a business card by any chance for our
9 reporter?

10 MR. KIRCHER: I do, I do.

11 JUDGE BAHR: Do you have any questions about --? Okay, thank
12 you.

13 (Whereupon, at 10:05 a.m., the proceedings were concluded.)